

IN THE MATTER OF	:	BEFORE THE
MONTEVIDEO REALTY	:	HOWARD COUNTY
BUSINESS TRUST	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 09-004S

.....

DECISION AND ORDER

On January 20, 2010, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Montevideo Realty Business Trust for a retroactive variance to erect a 10'4"x7'2", 72-square foot, 10'4" high, freestanding sign to be located 17 feet from the road right-of-way rather than the 72-foot setback required in relation to the total sign area and the 20'8" setback required in relation to the sign height in an M-2 (Manufacturing-Heavy) Zoning District, filed pursuant to Section 3.513 of Subtitle 5 of Title 3 of the Howard County Code (the "Sign Code").

The Petitioner certified to compliance with the notice, advertising, and posting requirements of the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Robert Eitel and Thomas Allman testified on behalf of the Petitioner. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Property. The subject property is located in the 1st Election District on the north side of Montevideo Road at the county line. It is referenced as Tax Map 43, Block 16, as Parcels 572, 346 97, 344 and 441 and is also known as 7595 Montevideo Road. The M-2 zoned, irregularly shaped Property is about 36.71 acres in size. The Property lies near the bottom of hill. There are two existing means of access to the Property. Entrance 1 is the entrance closest to the proposed Dorsey Run Road extension and that portion of Montevideo Road to be improved through a capital project (see Finding 3). Entrance 2 is located close to the railroad right-of-way at the county line.

2. Vicinal Properties. All adjacent properties are zoned M-2. The property to the south is a CSX railroad right-of-way.

3. Roads. The speed limit on Montevideo Road is 30 MPH. As I stated at the hearing, my experience is that the average speed of commercial vehicles traveling along this section of the road is generally higher. During the hearing, I also discussed with Robert Eitel my experience with traffic hazards posed along Montevideo Road, and particularly along the area of the future Dorsey Run Road extension. Beginning along the northern adjoining Parcel 8a, Montevideo Road inclines in grade for several hundred feet and declines just before the future Dorsey Run Road Extension. Mr. Eitel testified this area is subject to a capital project, which will lower the road grade and reduce traffic hazards. This capital project is depicted on Petitioner's Exhibit 6, a Site Development

Plan (SDP 08-116), for the Property.

4. The Requested Sign Variance. The sign, as described above, would be located on the northwest side of the Property, 17 feet from the Montevideo Road right-of-way. The brown brick, double-sided sign identifies the Property as the "Dorsey Commerce Center." Below these words is a black sign face with room to identify the center's tenants. The sign is illuminated from lighting above the sign cabinet. The Petition states the previous owner erected the sign without sign permit or variance approval.

5. The Petitioner has a technically complete site development plan for the Property SDP 08-116 (Petitioner's Exhibit 1 and 6). Mr. Eitel testified the second page of Exhibit 6 depicts the agreed-upon means of ingress and egress to the Property. Entrance 2 near the railroad tracks would become "ingress-only." Entrance 1 would be divided by a directional island into ingress-only and egress-only sections, the egress portion being closer to the Dorsey Run Road extension. Mr. Eitel also stated the sign inspector was not aware of this limitation in the SDP when he prepared the staff report.

6. According to the staff report, the view east from Entrance 2 is blocked by a tree, light pole, the existing sign and the crest of the hill (some 800 feet to the east). The report also concludes the sign blocks the view from Entrance 1 toward the county line. For these reasons, the report recommends moving the sign back at least ten feet. Although Petitioner's Exhibit 4 was introduced to demonstrate the sign does not block the view from Entrance 2, I stated during the hearing that I did indeed have trouble pulling out from this entrance because the sign blocked my view.

7. Petitioner's Exhibit 6 depicts the view from Entrance 1 toward the railroad

tracks and the county line. Two vehicles just beyond the railroad tracks are clearly visible from a vehicle sitting ten feet from the road.

CONCLUSIONS OF LAW

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Facts, I conclude as follows:

That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.

The Site lies along the bottom of a hill. This topographical condition leads to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(1).

Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

The grade change caused by the Property's location at the bottom of a hill makes visibility of a complying sign difficult. This grade change impedes motorists' ability to see a conforming sign in a safe manner, causing practical difficulties and unnecessary hardship in complying with this subtitle. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(2).

Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.

There are no historical, architectural, or aesthetic characteristics of the Property to be considered under section 3.513(b)(3).

4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

There is no evidence of adverse effects from the proposed sign on the use of adjacent properties. Although the staff report correctly observes the existing sign causes a dangerous traffic condition for vehicles exiting Entrance 2, Petitioner's evidence concerning this entrance persuades me this condition will be eliminated with the eventual development of the site. However, the sign already exists and the Department of Planning and Zoning has granted the Petitioner certain waivers, including submitting the SDP plan originals for signature approval (Petitioner's Exhibit 1). Consequently, the timeline for implementing the ingress/ingress SDP restrictions is extended. This means the existing dangerous traffic conditions associated with Entrance 2 will continue for some time into the future. Rather than require the Petitioner to move the sign back ten feet, I am requiring it to: 1) clearly designate Entrance 2 as ingress only, and 2) install a directional island at Entrance 1 and clearly identify the ingress and egress portions of the entrance. Subject to these conditions, I conclude the sign is unlikely to produce adverse effects on the use or development of adjacent properties or result in dangerous traffic conditions.

That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.

The proposed sign is a reasonable size and the minimum necessary to comply with the business' signage requirements. I therefore conclude the sign is the minimum necessary to afford relief and can be granted without substantial impairment of the intent, purpose and integrity of the Sign Code, in accordance with Section 3.513(b)(5).

That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties are a result of unique Property conditions, vicinal obstructions, and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

ORDER

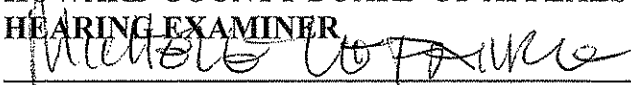
Based upon the foregoing, it is this **1st day of February 2010**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Montevideo Realty Business Trust for a retroactive variance for a 10'4"x7'2", 72-square foot, 10'4" high, freestanding sign to be located 17 feet from the road right-of-way rather than the 72-foot setback required in relation to the total sign area and the 20'8" setback required in relation to the sign height in an M-2 (Manufacturing-Heavy) Zoning District is hereby **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the sign as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall clearly designate Entrance 2 as ingress only. The Petitioner shall install a directional island at Entrance 1 and clearly identify the ingress and egress portions of the entrance, consistent with SDP 08-116.
2. The sign shall not be altered or relocated without a sign permit issued by the Department of Inspections, Licenses, and Permits, in accordance with Section 3.509 of the Howard County Sign Code.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.